

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offers W-102827 and W-102828.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Filing--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

The Bureau of Land Management properly rejected over-the-counter oil and gas lease offers for lands previously included in expired leases since, under 43 CFR 3112.1-1 (1986), such lands were subject to the filing of noncompetitive lease offers only in accordance with simultaneous filing procedures.

APPEARANCES: William Rideout, Esq., Cheyenne, Wyoming, for appellant; Lowell L. Madsen, Esq., Office of the Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Floyd Lauber has appealed from a December 10, 1986, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his noncompetitive over-the-counter oil and gas lease offers W-102827 and W-102828. Oil and gas lease offer W-102827 included the W\ sec. 22 and all of sec. 28, T. 21 N., R. 117 W., sixth principal meridian, Lincoln County, Wyoming; W-102828 included all of sec. 26 and the NE^ NE^, S\ N\, S\ sec. 34 in the same township. BLM stated it rejected the offers because lands in cancelled, relinquished, terminated, or expired leases had to be first offered for leasing in the simultaneous filing program, pursuant to 43 CFR 3112. 1/

1/ On Dec. 22, 1987, Congress enacted the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256 (1987), which amended 30 U.S.C. | 226(b)(1) (1982), to provide for an all-competitive leasing procedure for the leasing of Federal oil and gas, with noncompetitive leasing occurring only on a limited basis following competitive offering. Regulations promulgated to implement the Act provide that BLM may allow the nomination of lands appropriate for competitive bidding. 43 CFR 3120.3-1; 53 FR 22844 (June 17, 1988).

The lands in appellant's offers were included in an earlier oil and gas lease, W-17394, which issued effective April 1, 1969. ^{2/} A part of the lands in that lease (sec. 28) was segregated under lease W-64336 when the remainder of W-17394 was incorporated into the Fossil Ridge Unit in 1978. Leases W-64336 and W-17394 expired on June 7, 1980, and March 26, 1982, respectively.

Thereafter, on September 1, 1982, BLM published, in its September 1982 Lands Available List notice of various parcels available for simultaneous leasing. That list described parcel WY-674 as including sec. 11: All; sec. 26: All; and sec. 34: NE[^] NE[^], S\ N\, S\, totalling 1,800 acres. It also described parcel WY-675 as sec. 22: W\, SE[^], including 480 acres. In a public notice also dated September 1, 1982, however, BLM revised the descriptions of those two parcels as follows:

Parcel WY-647 contains an oil placer mining claim and has been revised to delete Sec 11: W\, Sec 26: All, Sec 34: NE[^] NE[^], S\ N\, S\, Corrected acreage is 320.00 A.

Parcel WY-675 contains an oil placer mining claim and has been revised to delete Sec 22: W\, Corrected acreage is 160.00 A.

Thus, all the lands in the offers in question were either not included in the September 1982 simultaneous listing (sec. 28) or were deleted from the lands originally posted as available in the September drawing. By decision dated February 7, 1983, BLM notified appellant's wife, Clara R. Lauber, that she was the successful drawee for parcel WY-674 which included 320 acres. The lease for that acreage subsequently issued to her. She did not appeal the exclusion of the land embraced by the oil placer mining claims from her lease.

Appellant asserts that, following issuance of the lease to his wife, he undertook an investigation into the history of the lands which he thereafter included in lease offers W-102827 and W-102828 and discovered that those lands had been regularly leased for oil and gas in the past without regard to the oil placer mining claims. Appellant contends that he has been frustrated by the apparent inconsistencies in BLM's leasing policy regarding lands burdened by oil placer mining claims. He notes that to his knowledge the lands in question had not at the time of the filing of his statement of reasons been made available for simultaneous leasing and that the relevant oil and gas plat contained the notation "Not Open To OG Lse" for the lands. He states that he filed his over-the-counter offers with BLM in order "to bring this issue to the forefront" (Statement of Reasons at 3).

^{2/} Expired lease W-17394 initially contained: sec. 22: W\, SE[^]; sec. 26: All; sec. 28: All; sec. 34: NE[^] NE[^], S\ N\, S\; T. 21 N., R. 117 W., sixth principal meridian.

BLM's response to appellant's statement of reasons provides the following additional facts. ^{3/} An oil and gas plat dated September 3, 1982, contains the notation "Not Open to OG Lse" for the lands in question. The basis for that notation apparently was the outstanding oil placer claims, and although leases had issued in the past for such lands, the Wyoming State Office's policy in 1982 was not to lease lands encumbered by such claims. However, in an October 29, 1984, memorandum, the Director, BLM, informed the Wyoming State Director, BLM, that numerous mining claims in Wyoming were being held by Production Industries only for oil shale and that such lands could be leased for the oil and gas if the lease included a notation regarding Production Industries' interest in the oil shale. The memorandum indicated that the Department became aware in 1981 that Production Industries' interest in the claims was limited to oil shale. BLM states that the claims located on the lands in question are oil shale placer claims held by Production Industries.

In addition, BLM states that when appellant filed his over-the-counter offers on September 29, 1986, the Secretary had, by memorandum dated April 23, 1985, imposed a moratorium on noncompetitive oil and gas leasing in the Overthrust Belt in Wyoming which included the lands in appellant's offers and that the moratorium was not lifted until January 29, 1987. Although in its response BLM indicates that the moratorium served as a basis for the rejection of appellant's offers, the moratorium was not mentioned by BLM in its decision. The sole reason for rejection of the offers provided by BLM in its decision was that such lands were only available for leasing pursuant to the simultaneous leasing system. That was the proper basis for rejection of the offers.

[1] At the time appellant filed his offers the regulations provided that land, not in a known geological structure of a producing oil or gas field, which had been included in an expired oil and gas lease could be leased only in accordance with the regulations for simultaneous filings. 43 CFR 3112.1-1; Curtis Wheeler, 56 IBLA 58 (1981); see Inexco Oil Co., 93 IBLA 124 (1986). The lands included in appellant's offers were previously included in oil and gas leases which expired in either 1980 or 1982. Because these lands had been included in expired leases, BLM properly rejected appellant's over-the-counter offers for such lands. 43 CFR 3112.1-1; James W. Phillips, 61 IBLA 294 (1982); Curtis Wheeler, *supra*. The fact that these lands may have been suitable for simultaneous oil and gas leasing in September 1982 does not negate the fact that none of the lands have actually been made available for simultaneous oil and gas leasing since the previous leases expired. See Lowell J. Simons, 70 IBLA 128, 129 (1983). Thus, at the time appellant filed his offers, the lands were not subject to over-the-counter leasing.

^{3/} By order dated Mar. 30, 1987, the Board requested that BLM respond to appellant's statement of reasons. The response consisted of arguments presented by counsel for BLM and a memorandum to the Regional Solicitor, Rocky Mountain Region, from the Chief, Leasing Section, Wyoming State Office, dated Apr. 20, 1987, and its attachments Nos. 1-6, addressing the statement of reasons.

We note that the current regulations, which became effective on June 17, 1988, provide: "All lands available for leasing shall be offered for competitive bidding under this subpart, including but not limited to: (a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished." 43 CFR 3120.1-1(a); 53 FR 22844 (June 17, 1988). Therefore, appellant may seek to have these lands made available for competitive leasing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

James L. Burski
Administrative Judge